

The Prison and Young Offender Institution (Adjudication) (Amendment) Rules 2024 – Equalities Statement

Equality Duties

This document records the analysis undertaken by the Department to enable Ministers to fulfil the requirement placed on them by the Public Sector Equality Duty (PSED) as set out in section 149 of the Equality Act 2010. The PSED requires the Minister to have due regard to the need to the following aims:

1. Eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
2. Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and
3. Foster good relations between persons who share a relevant characteristic and persons who do not share it.

The protected characteristics are race, sex, disability, sexual orientation, religion and belief, age, marriage and civil partnership, gender reassignment and pregnancy and maternity.

Summary of policy proposal

The purpose of the Prison and Young Offender Institution (Adjudication) (Amendment) Rules 2024 (hereafter referred to as 'The Amendment Rules') is to make changes to the Prison Rules 1999 and Young Offender Institution (YOI) Rules 2000 ('the Prison and YOI Rules') to improve behaviour management in prisons by ensuring serious offences against discipline are appropriately charged and by providing governors with more options for dealing with prisoners who have committed offences against discipline, using a rehabilitative approach.

Firstly, the Amendment Rules amend the offences against discipline in the Prison and YOI Rules. They replace the existing offences against discipline relating to race with charges that relate to all nine protected characteristics (including race) in line with the Equality Act 2010. They also introduce new offences against discipline for sexually inappropriate behaviours. These changes will ensure that victims of offences against discipline related to one or more protected characteristic are treated equally, and that experiences of victims of sexual offences are recognised and recorded within the adjudications system to help combat sexually inappropriate behaviour in prisons.

Secondly, the Amendment Rules give prison governors two new options when adjudicating. Firstly, they provide for payback punishment where a prisoner makes amends for their wrongdoing by engaging in rehabilitative or reparative work that is unpaid, to give back to the prison community. Secondly, the Amendment Rules allow for the suspension of a punishment, on the condition that a prisoner completes a rehabilitative activity as directed by the adjudicating governor. This could be engagement in services or with another rehabilitative or restorative activity, chosen to address the prisoner's underlying causes of offending behaviour. These options will allow prisons to better address the reasons behind rule breaking to support prisoners to break patterns of repeated misbehaviour.

Thirdly, the Amendment Rules give the governor or Independent Adjudicator statutory discretion as to whether to impose compensation requirement (and the amount that they impose) where a prisoner has destroyed or damaged any part of a prison or any other property belonging to a prison to take account of whether repayment of the full cost would exacerbate financial hardship or cause other negative indirect consequences.

Evidence and Analysis

This analysis considers the amended and expanded Prison and YOI Rules, and the impact on the nine characteristics protected under the Equality Act 2010. In doing this we have considered the existing adjudication policy (PSI 05/2018) and the adjudication findings and data published in the Offender Management Statistics Quarterly¹, the HMPPS Offender Equalities Annual Report (2022-2023)², Adjudications: England and Wales 2011-2018 (Adjudications Story July 2019)³ and the Safety in Custody statistics⁴. We have also considered several studies as part of this work including a literature review, studies on the perceptions of staff and prisoners on the adjudications process, and the impact of sanctions. An Implementation Unit Deep Dive has also informed this work.

Adjudications contribute to the maintenance of order, control, discipline, and a safe environment in prisons by ensuring that offences are investigated and those responsible are punished. The Adjudications Policy (PSI 05/2018)⁵ and the Prison and YOI Rules provide a framework with appropriate safeguards and guidance to enable prisons to use their discretion to adjudicate and ensure that the process is carried out lawfully, fairly, and justly in a non-discriminatory manner which takes account of all protected characteristics.

The adjudication process itself contains reasonable scope for professional discretion for charge laying to referral to the Independent Adjudicator (IA) and imposing punishments. This is because laying a disciplinary charge is a discretion and not a duty. When the discretion is not exercised fairly, consistently or as a proportionate response, it can lead to a lack of confidence in the system from both prisoners and staff.

When the adjudications policy was updated in December 2018, August 2022, and May 2023, we assessed equalities impacts on protected characteristics and we continue to assess equalities impacts and gather any relevant evidence to update our equality considerations.

This legislation will apply to all prisoners who have been placed on report for an adjudication in respect of rule breaking. Therefore, the prisoners who will be directly affected by this instrument could have any or multiple of the protected characteristics below. We have considered the impact of this change on prisoners for each protected characteristic.

To fully understand the impact, we conducted informal consultation (via focus groups and structured meetings) around the introduction of this change with operational and MoJ and HMPPS policy leads.

Work is simultaneously ongoing on a whole system review of adjudications which encompasses other equalities improvements.

Protected characteristics

Age

The existing policy on adjudications (PSI 05/2018) reminds governors/directors of the statutory duty placed upon them under the Children Act 2004 to ensure that their functions, and any services they contract out to others are discharged with a regard to the need to safeguard and

¹ [Offender management statistics quarterly - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/statistics/offender-management-statistics-quarterly)

² [HMPPS Offender Equalities Report 2022/23 \(publishing.service.gov.uk\)](https://publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/114444/hmpps-offender-equalities-report-2022-23.pdf)

³ [The Adjudications Story: 2011 to 2018 - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/statistics/the-adjudications-story-2011-to-2018)

⁴ [Safety in custody statistics - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/statistics/safety-in-custody-statistics)

⁵ [Prison adjudications policy: PSI 05/2018 - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/policies/prison-adjudications-policy)

promote the welfare of children. The adjudications policy requires staff to signpost children and young people to the IMB or other Advocacy Service to ensure they fully understand and can engage properly with the adjudication process. Adjudicators are also required to take the age, maturity, and individual circumstances of each young person into account in their decision-making. The PSI is wholly consistent with PSI 08/2012 Care and Management of Young People⁶.

We know from published statistics that younger people (up to age 29) receive high numbers of adjudications and commit lots of low-level offences. In a study conducted on sanctions⁷, significant age differences across rule-breaking type were detected. For example, while some individual age categories were no longer significantly different from the reference categories (varying for different subgroups), the pattern generally held of young people in all subgroups continuing to show a higher propensity for rule-breaking than older people. This may therefore result in higher incidences of the charges and sanctions being introduced by the Amendment Rules amongst the younger cohort, however, it is anticipated that this will be in line with current trends and will not represent any disproportionate increase for this or any age cohort. It is right that there is a proportionate response to rule breaking, which includes considering a rehabilitative approach to deal with repeated rule breaks. Work is ongoing as part of the whole system review of adjudications to look at what else can be done to support prisons in the management of adjudications with respect of prisoners with psychosocial immaturity, learning difficulties or challenges (LDC) and mental health issues.

The Howard League has made representations about more 'age appropriate' young offender adjudications. The adjudications policy also encourages staff to consider whether less formal measures such as Five- Minute Intervention (FMI) would be a more effective way of dealing with minor infringements of Prison and YOI Rules.

According to the Offender Management annual statistics from December 2022, the older prisoner group (60+) has the lowest number of adjudication outcomes. The adjudications policy acknowledges the population increase in older prisoners and highlights whether laying a charge is a fair or appropriate response to prisoners with ageing mental conditions such as dementia and the importance on checking if prisoners are fit to take part in a hearing.

The Amendment Rules should not adversely impact prisoners based on their age and the provisions from the existing PSI remain. For example, in the case of older prisoners, adjudicators would be expected to consider if the passage of time since the incident took place has impacted the ability and memory of an older prisoner to take part in an adjudication hearing.

The Children and Young Persons Act 1963 allows children of 14 years of age and over to work, subject to strict requirements, including the maximum number of hours permitted at weekends and on working days and also inside and outside of term times. These requirements ensure that any work does not interfere with their education. Per the YOI Rules, prisoners of compulsory school age in YOIs, must participate in education or training courses for a minimum of 15 hours per week within the normal working week and may undertake work in addition to this. Any work undertaken must, as far as practicable, foster responsibility and a prisoner's interests and skills and help to prepare them for their return to the community. The YOI Rules also currently provide for a punishment of extra work for not more than two hours a day. Under the Amendment Rules, the payback punishment will be made available in YOIs,

⁶ [Caring for young people in custody: PSI 08/2012 - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/policies/caring-for-young-people-in-custody)

⁷ [Examining the impact of sanctions on custodial misconduct following disciplinary adjudications - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/policies/examining-the-impact-of-sanctions-on-custodial-misconduct-following-disciplinary-adjudications)

subject to the legislative parameters regarding maximum hours of work allowed to prevent any interference with compulsory education. Unlike the majority of the adult prison population, prisoners of retirement age are not required to undertake work but may do so if they wish. Beyond this, retired prisoners can be required to complete programmes if they form part of their sentence/training plan or learning plan. In line with this principle, prison governors will be able to give a payback punishment to a prisoner of retirement age, if considered that the payback punishment will help the prisoner achieve their sentence plan. Governors should ensure that any age-related or other mental or physical health concerns are taken into consideration firstly, when determining the appropriateness of the punishment, and secondly, when determining the length and physical requirements of the punishment.

Under the Amendment Rules, changing the race charges to specify each protected characteristic individually will give equal prominence to the protected characteristic of age, and demonstrate to prisoners that rule breaking which is motivated by or demonstrates hostility towards someone's age will be taken seriously. This change will also allow for improved data recording about charges motivated by or demonstrating hostility to someone's protected characteristic/s.

Disability

HMPPS is subject to the requirements of the Equality Act 2010. It is required to promote disability and equality and eliminate unlawful discrimination in all prisons in England and Wales. Disability, as defined in the Act, covers a range of impairments, both physical and mental, including learning disability. The 2009 HMI Prisons thematic report on disabled prisoners does not identify disabilities as a relevant issue in adjudications.

We do not have sufficient data on outcomes for prisoners with disabilities. When considering disability, we used the Surveying Prisoner Crime Reduction (SPCR) survey⁸. An estimate of 36% of the SPCR prisoner sample was considered to have a disability when survey answers about disability and health, including mental health, were screened. This figure was made up of 18% with anxiety and depression, 11% with some form of physical disability, and 8% with both (figures do not add up to 36% because of rounding). This compares with approximately 34% of the same sample when asked whether they thought they had a disability, and 19% of the general population. We can therefore conclude that disability appears to be overrepresented in the prison population. As part of the ongoing work on equalities, consideration is being given to the evidence on neurodiversity and care leavers, as more data and evidence becomes available.

We do not expect the Amendment Rules to adversely impact prisoners with any disabilities. The existing adjudication process does not restrict the full participation of disabled prisoners, (and those with mental health and communication or language difficulties). Staff are required to consider what adjustments need to be provided for a prisoner on his/her ability to understand and participate fully in the adjudication process. Alternative formats such as audiotape and large print are suggested as some of the ways in which staff can ensure that the prisoner is not disadvantaged in the adjudication process due to a disability. Additional guidance has also been provided to ensure that the hearing room for adjudications is risk assessed for the safety of the adjudicating governor/IA, but also that reasonable adjustments should be made to the room so that it is accessible for prisoners and any other person required at the hearing who may have a disability.

⁸ [Estimating the prevalence of disability amongst prisoners: results from the Surveying Prisoner Crime Reduction \(SPCR\) survey \(publishing.service.gov.uk\)](https://publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/411111/estimating-the-prevalence-of-disability-amongst-prisoners-results-from-the-surveying-prisoner-crime-reduction-spcr-survey-published-2016.pdf).

An Easy Read version of the Prisoner Information Form (DIS2) is now in use to help prisoners with learning disabilities to better understand the adjudications process. It was specially designed with pictures and limited text to aid their cognitive processing of information and any further documents produced for prisoners to explain rehabilitative sanctions will be available in Easy Read format. Further work is also being done to simplify the language in the current DIS2.

Whilst governor adjudications take place in person in the prison, independent adjudications are typically virtual, however, physical hearings can be accommodated in circumstances when the Judge considers that it is necessary in the interests of fairness and justice. This is due to there being certain times where a virtual hearing may not be considered suitable for particular prisoners. Reasons include prisoners having a physical impairment or disability which might prevent full engagement with video or telephone connections, cognitive problems such as learning disabilities, or disorders such as Autism Spectrum Disorder.

The payback punishment may require the prisoner to engage in some physical activity. Prison governors will need to take work exemptions on medical grounds into account and will be expected to take disabilities into consideration when determining whether it is appropriate to impose this punishment. This could include making reasonable adjustments for wheelchair users for example, or considering whether there are unpaid work activities available that involve minimal or reduced levels of physical activity to ensure that the activity best suits the needs of the prisoner. Similar considerations will also need to be given when accounting for the prisoner's level of engagement and compliance. Likewise, when imposing a suspended punishment with a condition to engage in a specified rehabilitative activity, prison governors will be expected to take any disabilities into account, to ensure that the prisoner is able to meaningfully engage with the specified activity, and that their level of engagement or compliance will be measured with the impact, if any, of their disability taken into account. These new options are intended to be personalised to the root causes of the prisoner's rule breaking, and prison governors will be encouraged to innovate within the policy parameters of these new rehabilitative options. However, some prisons may be limited in what they can offer and may not have payback activities or rehabilitative activities that can be offered to prisoners with certain disabilities, in which circumstances, prisoners will be given a different punishment instead.

Changing the race charges to specify each protected characteristic individually will give equal prominence to the protected characteristic of disability and demonstrate to prisoners that rule breaking which is motivated by or demonstrates hostility towards someone's disability will be taken seriously. This change will also allow for improved data recording about charges motivated by or demonstrating hostility towards someone's protected characteristic/s.

Gender reassignment

According to the findings of the HMPPS Offender Equalities Annual Report 2022/2023, 80 of the 123 public and private prisons (65%) in England and Wales reported 1 or more transgender prisoners, whilst overall, prisons reported 268 prisoners currently living in, or presenting in, a gender different from their legal gender and who have had a local case board.

There are no specific statistics available on adjudications in relation to gender reassignment.

The Transgender Policy Framework (The Care and Management of Individuals who are Transgender)⁹ provides staff with clear direction in the support and safe management of transgender individuals in prisons.

We have no evidence that transgender prisoners are disadvantaged by the adjudications process. There is existing scrutiny on decision-making built in at a local level which includes reviewing adjudications data in line with all the protected characteristics (charged/proven/motivating factor) at quarterly standardisation meetings. Increased management oversight at a local level should highlight any potential issues, that may need addressing nationally.

We do not expect the Amendment Rules to adversely impact transgender prisoners.

Under the Equality Act 2010, a person has the protected characteristic of gender reassignment if they are proposing to undergo, are undergoing, or have undergone, a process or part of a process, for the purpose of reassigning their sex, by changing physiological or other attributes of sex. Including gender reassignment in this rule change will mean that “threatening, abusive or insulting” transphobic words or behaviours could be specifically charged as such. The policy intention is not that prisoners should be charged where there is innocent misgendering and this will be made clear in policy guidance.

Changing the race charges to specify each protected characteristic individually will give equal prominence to the protected characteristic of gender reassignment and demonstrate to prisoners that rule breaking which is motivated by or demonstrates hostility towards this will be taken seriously. This change will also allow for improved data recording about charges motivated by or demonstrating hostility towards someone’s protected characteristic/s.

Marriage and Civil Partnership

There is no specific data available on adjudications in relation to marriage and civil partnership. To date there has been no evidence of marriage and civil partnership having relevance in the adjudications process. HMPPS Diversity and Inclusion have previously raised an issue about the lines in PSI 05/2018, Annex B on sex in prisons, which states that there is no Rule specifically prohibiting sexual acts between prisoners, but if they are observed by someone who finds (or could potentially find) their behaviour offensive, a charge under PR 51 (20) / YOI R 55 (22) may be appropriate, particularly if the act occurred in a public or semi-public place within the establishment, or if the prisoners were ‘caught in the act’ during a cell search. But if two prisoners sharing a cell are in a relationship and engage in sexual activity during the night when they have a reasonable expectation of privacy, a disciplinary charge may not be appropriate. Alternatively, a response could be considered under the Incentives Policy Framework which contains an example behaviour expectation noting that prisoners should act with decency at all times remembering prisons/cells are not private dwellings (this includes not engaging in sexual activity). To date we have not encountered any issues with operating the adjudications guidance when dealing with sex in prisons. This is expected to remain unchanged with the Amendment Rules.

We do not expect the Amendment Rules to adversely impact married prisoners or those in a civil partnership.

Changing the race charges to specify each protected characteristic individually will give equal prominence to all protected characteristics including marriage and civil partnership.

⁹ [The care and management of individuals who are transgender - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/682227/The_care_and_management_of_individuals_who_are_transgender.pdf)

Pregnancy and Maternity

Pregnancy, childbirth, and the initial stages of motherhood can be times of vulnerability and that will particularly be so for women who are in prison. Pregnancy can be physically and emotionally challenging, with women experiencing huge changes in their bodies and many feeling anxious and uncertain about what the future holds for them and their baby.

There is no specific data available on adjudications in relation to pregnancy and maternity.

Governors must follow the arrangements in the Pregnancy, Mother and Baby Units and Maternal Separation from Children up to the Age of Two in Women's Prisons Policy Framework¹⁰, including making sure that women are asked on reception, or at the earliest opportunity, whether they are/could be pregnant or have children under the age of 18 months. The Pregnancy, Mother and Baby Units and Maternal Separation from Children up to the Age of Two in Women's Prisons Framework sets out some of the issues facing and affecting pregnant women, including some of their more common concerns, and provides guidance to staff on what action they can and should take to meet their needs.

We do not expect the Amendment Rules to adversely impact prisoners with the protected characteristic of pregnancy and maternity.

Neither the existing adjudications policy nor the Amendment Rules interfere with any of the arrangements for pregnant women or women in the early stages of motherhood in prison. Payback punishment and rehabilitative activity conditions will be available, and where relevant, offered to pregnant and those on the perinatal pathway. However, policy will specify that the following factors must be taken into account before determining whether it is appropriate to direct a prisoner to engage in these types of activities, or whether a reasonable adjustment may be required. Firstly, the Pregnancy, Mother and Baby Units and Maternal Separation from Children up to the Age of Two in Women's Prisons policy framework states that women living in mother and baby units should be able to access and take part in the regime of the prison, including activities aimed at addressing their offending behaviour. However, they should be given the appropriate flexibility to be able to balance these commitments with the needs of their child. Additionally, prison governors will be required to take into account whether a prisoner is on a period of maternity leave from regime activities, as well as any recommendations from their care plan, including the prison medical professionals' assessment of their physical and mental readiness to engage in activities. Prisons should consider if they are able to offer reduced hours or more minimal tasks for prisoners who are pregnant or on the perinatal pathway to better suit their needs, however there may be circumstances in which a prison is unable to offer an appropriate activity for those who are pregnant or on the perinatal pathway. For the protection of the prisoner's personal health and wellbeing, this is considered proportionate and in such cases, prisoners will be given a different punishment instead.

Changing the race charges to specify each protected characteristic individually will give equal prominence to the protected characteristic of pregnancy and maternity and demonstrate to prisoners that rule breaking which is motivated by or demonstrates hostility towards someone because of them being pregnant or a mother will be taken seriously. This change will also allow for improved data recording about charges motivated by or demonstrating hostility towards someone's protected characteristic/s.

Race

¹⁰ [Pregnancy, MBUs and maternal separation in women's prisons Policy Framework - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/policies/pregnancy-mother-and-baby-units-and-maternal-separation-from-children-up-to-the-age-of-two-in-women-s-prisons-policy-framework)

In March 2023, prisoners who declared themselves in the White ethnic group made up 66% of the remanded prison population in England and Wales and 74% of the sentenced prison population. Prisoners who declared their ethnicity as black or black British made up 14% of the remand prison population and 12% of the sentenced population and, Asian or Asian British represented 10% of remand and 8% of sentenced prisoners.

From the offender management statistics, foreign national offenders (FNOs) accounted for 10,423 prisoners in the prison population in December 2023, representing 12% of the total prison population. The most common nationalities after British Nationals in prisons were Albanian (13% of the FNO prison population) Polish (9%), Romanian (7%), Irish (6%), and Jamaican (4%).

The use of the authority to adjudicate and punish behaviours must be proportionate, lawful, and fair. The existing policy requires staff to arrange for interpreters or translators when any language requirements or difficulties would impair the prisoner's ability to understand and take part in a fair process. Hearings should be adjourned to facilitate this if the service is not readily available. The Amendment Rules make no changes to this.

The Lammy Review (2017)¹¹ briefly identifies disproportionate outcomes for BAME prisoners subject to the adjudications process. Analysis commissioned for the Lammy review indicated that based on 2014/15 data, adjudications were disproportionately brought (charges made) against adult male BAME prisoners from a Black or a Mixed ethnic background, though these charges were less likely to be upheld once reviewed. This trend has continued in recent years; in 2021, 13% of the prison population were black, whilst 18% of all adjudications heard that year were against black prisoners.

In the sanctions study¹², results for ethnicity were less often found to be significantly different, i.e., the difference in propensity for further rule-breaking for people in different ethnic groups was not replicated consistently. The differences reported in relation to protected characteristics (including gender and ethnicity) warrant further attention, such as examining differences in how hearings are experienced, and decisions are made.

There might also be an issue around trust in authorities and willingness to engage in processes which is lower in BAME groups due to histories of discrimination, which might impact how they engage with the adjudications process.

The HMIP thematic report¹³ regarding the experiences of adult black male staff and prisoners highlighted that a recurring theme in the literature on black prisoners is their experience of harsher treatment within prison discipline processes. The report reiterated that government data shows that, between 2011 and 2018, black prisoners were overrepresented in the prison adjudication process (MoJ, 2019), although adjudications against black and mixed heritage prisoners were less likely to be proven.

The HMIP thematic report said that white staff often associated black prisoners with gangs and as a threat to prison order, thereby inflating their assessed risk. It found that this label was applied by staff even where there was no specific evidence to support it. Black prisoners were concerned about how their progression through the prison system, and opportunities for early release or work could be affected by the gang member label, records of incidents and subsequent adjudications.

¹¹ <https://www.gov.uk/government/publications/lammy-review-final-report>

¹² [Examining the impact of sanctions on custodial misconduct following disciplinary adjudications - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/publications/examining-the-impact-of-sanctions-on-custodial-misconduct-following-disciplinary-adjudications)

¹³ [The experiences of adult black male prisoners and black prison staff \(justiceinspectorates.gov.uk\)](https://www.justiceinspectorates.gov.uk/hmip-reports-and-publications/hmip-thematic-report-2019)

HMIP highlighted examples of competent and incompetent collection and use of equalities data. They also highlighted that the data was out of date, indicating the broader lack of priority given to race issues in prisons.

Adjudications are monitored, audited, and evaluated in a variety of ways, including through IMB members, and mandatory standardisation panels. These panels require governors to not only consider the charges which lead to quashes and dismissals but also to interrogate the data regarding protected characteristics and social mobility factors to identify any differential treatment and take necessary resulting action, as per the 'explain or reform' principle.

Prior to this rule change, prisons considered if charges for disciplinary behaviour, motivated by hostility towards a protected characteristic, were appropriately identified, assessed, and received parity in adjudication punishments and guidance has previously been issued to prisons to remind staff of existing provisions within the adjudications policy on charging and punishments relating to aggravating factors. The Chief Magistrate's Sentencing Guidelines for Independent Adjudicators also provide for harsher punishments where an offence is proven to be motivated by hostility towards a protected characteristic.

More generally, Governors are required to inquire impartially into the facts of a case. Prisoners have the right to present their case, call witnesses and have legal advice or request representation (or in an IA hearing, have legal representation).

The whole system review of adjudications has been informed by engagement with a diverse mix of prisoners, including those from ethnic minority backgrounds, and a wide range of research and data. The aim is to create a system that achieves positive behaviour change and is perceived by staff and prisoners as fairer and more transparent, with greater efficiencies. Consultation with the third sector through the Race Action Programme was also undertaken in respect of the payback punishment and rehabilitative activity conditions, which identified no issues of disproportionality stemming from the proposals in respect of ethnicity.

Accountability for the fairness of outcomes sits with the operational line. The content of the assurance procedures is being reviewed to include a new toolkit for governors to ensure that all prisons consistently monitor all areas of adjudications and impacts and take actions to address any disproportionality. Mandating discussion on race data is also being considered and guidance will be provided to ensure staff receive feedback to make necessary improvements, as well as to share good practice across regions.

A new Adjudication Liaison Officer triage system has been built into a new digital adjudication process that is being rolled out to prisons to ensure that reporting officers are laying the correct charges and that the response to the rule breaking is proportionate.

Improved training for new staff has also been rolled out on laying a charge which includes a focus on Five Minute Interaction (FMI), procedural justice, de-biasing in decision-making and a link to cultural intelligence training. Staff will be able to better adapt their approach to the particular needs of the individual through improved interactions and better skills with aim of addressing poorer outcomes for black and mixed ethnic background prisoners. A refresher training pack for existing staff is being developed.

We do not expect the Amendment Rules to adversely impact prisoners because of race. As outlined above local governance (quarterly standardisation meetings) are built into the existing process to identify any adverse impact and the actions planned will look to address the existing disproportionality in the system.

This rule change removes the race specific charges and replaces them with charges that mention all nine protected characteristics (including race) instead. Therefore, race will still be an identifiable protected characteristic within each relevant charge. This does not mean rule breaking which is motivated by or demonstrates hostility towards someone's race will receive lesser parity, but that offences which are motivated by or demonstrating hostility towards all protected characteristics will be appropriately charged and punished. Prisons will still be required to have punishment tariffs appropriate to local issues and review these regularly. This change will allow for improved data collection and recording about charges motivated by or demonstrating hostility to all protected characteristics.

Religion

According to the Offender Equalities Annual Report for 2022/23, almost half (45%) of the prison population that specified a religion or belief self-identified as being Christian in March 2023. On 31st March 2023, 31% of prisoners identified as having no religion and 18% identified as Muslim.

According to the Offender Management statistics, as of March 2022, there were 13,858 prisoners of the Muslim faith. Prisoners can be punished for failing or refusing to take a Mandatory Drug Test (MDT), but important guidance is contained in the PSI regarding MDTs for prisoners observing Ramadan. For any other prisoner observing a fast, the policy signposts staff to HMPPS Security Group for further advice.

There is no further specific data available on adjudications in relation to religion and belief.

The principle of carrying out adjudications and MDTs on a Sabbath for Jewish prisoners is yet to be tested. We have received litigation on these grounds on two occasions but due to procedural errors on both occasions we have been advised to concede. However, advice from HMPPS Chaplaincy has not required us to make any amendments to the policy thus far.

No expected adverse outcome based on the prisoner's religion has been identified resulting from the Amendment Rules.

The existing adjudications policy also highlights to practitioners the important distinction between religion and race. This supports the accurate collection of local data, which is a starting point to identify any trends/potential disproportionality and further supports the wider government approach to hate crime, and this data collection will be improved with these Amendment Rules because charges will specify each protected characteristic individually. This will give equal prominence to the protected characteristic of religion and demonstrate to prisoners that offences motivated by or demonstrating hostility towards someone's religion will be taken seriously.

Sex

Between 2011-2018 the volume of adjudications against women rose by 92%, with an average yearly growth rate of 11%, but the same report also found that the number of female adjudications were proportional to the number of females in the prison population (Adjudication Story)¹⁴.

According to the Offender Equalities Annual Report publication for 2022-2023, males comprised 96% of the prison population and females comprised 4%. These figures do not

¹⁴ [The Adjudications Story: 2011 to 2018 - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/100000/2011-2018-Adjudication-Story.pdf)

reflect the national population breakdown for males and females, demonstrating that males are therefore over-represented in prison.

The latest safety in custody statistics showed that in the 12 months to September 2023, the rate of self-harm incidents increased by 38% in female establishments and 11% in male establishments.¹⁵ The existing policy makes clear that the threat of punishment must not be used to form part of the prison strategy for dealing with self-harm or attempted self-harm. Staff are required to consider if the incident is an act of self-harm or even the first manifestation of a potential act of self-harm. At punishment stage, adjudicators must consider risk factors on an open ACCT, or an ACCT closed within the last three months before a punishment is awarded.

The Amendment Rules are not expected to disproportionality affect males or females. However, offence paralleling behaviour is an issue in prisons holding mainly sex offenders who are male and with the increase in female officers there is a potential that new offences for sexually inappropriate behaviours could impact males more, as they may be disproportionately likely to commit them. It is right that these serious offences are tackled and monitored.

Changing the race charges to specify each protected characteristic individually will give equal prominence to the protected characteristic of sex and demonstrate to prisoners that rule breaking which is motivated by or demonstrates hostility towards someone's sex including sexual harassment will be taken seriously. This change will also allow for improved data recording about charges motivated by or demonstrating hostility towards protected characteristic/s.

Sexual Orientation

We looked at the Offender Equalities Annual Report for 2022/2023 and 97% of prisoners who declared a sexual orientation reported that they were heterosexual.

There are no specific statistics available on adjudications in relation to sexual orientation. There is no evidence that sexual orientation is relevant to adjudications. As mentioned above, HMPPS Diversity and Inclusion have previously raised an issue about the lines in PSI 05/2018 Annex B on sex in prisons. We have maintained the existing position. To date we have not encountered any issues with operating the adjudications guidance when dealing with sex in prisons.

We do not expect the Amendment Rules to have differing impact based on the prisoner's sexual orientation.

Changing the race charges to specify each protected characteristic individually will give equal prominence to the protected characteristic of sexual orientation and demonstrate to prisoners that offences demonstrating rule breaking which is motivated by or demonstrates hostility towards someone's sexual orientation will be taken seriously. This change will also allow for improved data recording about charges motivated by or demonstrating hostility towards someone's protected characteristic/s.

Intersectionality

Currently there is no data available on adjudications in relation to intersectionality. We are committed to considering emerging evidence and data on intersectionality issues. We commit

¹⁵ [Safety in custody statistics - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/statistics/safety-in-custody-statistics)

to further updating the Adjudications data to inform policy development using the Offender Management Statistics Quarterly bulletins and other publications.

This rule change will allow data to be separately collected for each protected characteristic and we will consider how this could improve the evidence base for intersectionality in adjudications, where prisoners are placed on report for charges relating to multiple protected characteristics at the same time.

Eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act

Direct discrimination

We believe that the Amendment Rules are not directly discriminatory within the meaning of the Equality Act 2010 as any changes will be applied to all prisoners equally. We do not consider that they result in people being treated less favourably because of a protected characteristic and the adjudications process is clearly supported by the policy which has been assessed separately in relation to PSED.

Indirect discrimination

Our initial assessment, based on the available information, is that these Amendment Rules will not be indirectly discriminatory within the meaning of the Equality Act 2010 since it will be applied in the same way to everyone and will not result in any particular disadvantage for anyone with a protected characteristic.

However, behaviour must be managed with careful consideration of protected characteristics and equality to ensure that the behaviour management approach is appropriate to all. Consideration does need to be given to the disproportionate representation of some protected characteristic groups in the criminal justice system, namely sex, age, those with disabilities and race and the conclusions of the Lammy Review that stereotyping and bias (conscious or unconscious) can influence decision making in a justice context – see details under those protected characteristics above.

The adjudication process itself contains reasonable scope for professional discretion from laying a charge to referral to the IA and imposing punishments. This is because laying a charge is a discretion and not a duty. When the discretion is not exercised fairly, consistently or as a proportionate response, it can lead to a lack of confidence in the system from both prisoners and staff. For this reason, we commissioned two qualitative studies on staff and prisoner perceptions and a sanctions study to examine the impact of disciplinary punishments on custodial misconduct to inform a future evidence-based adjudications policy.

We will continue to monitor the data to check for any potential indirect discrimination or impact on certain groups who may be disproportionately affected by the impact of the rule change.

We will continue to work closely with HMPPS to incorporate the work on debiasing in decision-making into the future training products to reduce the scope of implicit bias negatively impacting the outcomes for prisoners in the adjudications process. The policy was updated in 2018 to draw attention to the risk of bias for all those involved in the adjudication process, and it has been incorporated in new officer training. It also alerts the reader to their responsibilities under PSED, when discharging their duties.

HMIP and IMB reports have been critical of access to language services. In response to this, we are planning to create centralised translated copies of all adjudication paperwork that can be issued to a prisoner. The aim is to have translated copies for all prisoner issued adjudication

in the top ten languages used in prison and we will also be including Welsh translations in this project.

We have assessed that the Amendment Rules will improve the way the adjudications system works with regards to being able to charge and record charges more accurately. They will also provide prison governors with more options to respond to offences against discipline using a rehabilitative approach. The general principle is that payback punishments and rehabilitative activity conditions would be available for all prisoners at establishments that choose to operate them. Where possible, governors should consider any reasonable adjustments that can be made to facilitate the prisoner benefiting from these activities, however, there may be circumstances in which the only activities available at a prison are deemed not suitable for certain groups, such as pregnant and post-natal prisoners, or prisoners with a disability, for example. This would be decided on a case-by-case basis determined by the needs of the prisoner.

We do not consider that there will be indirect discrimination on any groups as a result of these improvements.

Discrimination arising from disability and duty to make reasonable adjustments

We do not consider there to be a risk of discrimination arising from disability in relation to these Amendment Rules. We recognise that it remains important to ensure that we continue to make reasonable adjustments for offenders with disabilities; we have existing policies in place to do this.

As mentioned above, and to ensure the adjudication process does not restrict the full participation of disabled prisoners, (and those with mental health and communication or language requirements and/or difficulties) the PSI guidance was expanded to include staff considering what adjustments need to be provided for a prisoner with an impairment on his/her ability to understand and participate fully in the adjudication process. Alternative formats such as audiotape and large print are suggested as some of the ways in which staff can ensure that the prisoner is not disadvantaged in the adjudication process due to a disability. Additional guidance has also been provided to ensure that the hearing room for adjudications is risk assessed for the safety of the adjudicating governor/IA, but also reasonable adjustments should be made to the room so that it is accessible for prisoners and any the person required at the hearing who may have a disability.

An Easy Read version of the DIS2 form was introduced in 2021 to help prisoners with learning disabilities to better understand the adjudications process. It has been specially designed with pictures and limited text to aid their processing of the information. Prisoners will continue to have the right, under PSI 32/3011 Ensuring Equality¹⁶, to be treated by service providers in a respectful, sensitive, and professional manner without discrimination of any kind.

Harassment and victimisation

Governors are already required to look at harassment and victimisation through the adjudication process, through the mandatory standardisation panels as mentioned, and in adjudication hearings.

We do not consider there to be a risk of harassment or victimisation as a result of these Amendment Rules, but we are committed to continue to monitor this.

¹⁶ [Ensuring equality: PSI 32/2011 - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/policies/ensuring-equality)

Positive duties

Advance equality of opportunity

Consideration has been given to how these proposals impact on the duty to advance equality of opportunity by meeting the needs of prisoners who share a particular characteristic, where those needs are different from the need of those who do not share that particular characteristic.

In 2021, as mentioned above, we launched an Easy Read version of the DIS2 form for adjudications (prisoner information sheet) to help prisoners with learning difficulties better understand the adjudications process.

The adjudications policy already provides for people with communication and learning disabilities and takes account of individual needs-based assessment when considering punishment. Governors already have autonomy in deciding whether or not to adjudicate and have discretion in considering cases on individual merits which includes any protected characteristics.

Taking a more rehabilitative approach to adjudications by introducing the payback punishment and rehabilitative activity conditions will help to address prisoners' individual circumstances and needs behind their rule breaking behaviour, supporting them to lead better lives in custody and on release.

We will continue to monitor data, consult with relevant stakeholders, and consider any emerging evidence in this area.

Linked to this, the adjudications training for new officers has been updated, and work is underway to create new refresher training for operational staff. Further work will be done at a later date to update the training for Adjudication Liaison Officers and Governors once policy updates stemming from the whole system review of adjudications have been completed. Updates to the training will incorporate evidence relating to procedural justice and punishments. The improved training will provide governors and staff with a better understanding of 'what works' when exercising their discretion in disciplining prisoners, so that they know when and how to deter further breaches of the Prison and YOI Rules.

The work to digitalise parts of the adjudications system will improve the efficiency of the system, simplifying the system and improving prisoner and staff understanding. This will have a positive impact on prisoners as it will free up staff time to focus on meaningful prisoner interactions.

The Amendment Rules will be applied to all prisoners equally, however in respect of payback punishment and rehabilitative activity conditions, there may be occasions whereby a prison is unable to accommodate a work or rehabilitative activity that suits or can be adjusted for the specific needs of a prisoner. Beyond this, we do not consider that equality of opportunity would be negatively affected.

This rule change also brings the Prison and YOI Rules in line with the Equality Act 2010, giving equal prominence to all protected characteristics which arguably will advance equality of opportunity.

Fostering good relations

The Amendment Rules will be applied to all prisoners equally, however in respect of payback and rehabilitative activity conditions, there may be occasions whereby a prison is unable to accommodate a work or rehabilitative activity that suit or can adjust for the specific needs of

a prisoner resulting in some individuals not being offered the new adjudication outcomes, following a case by case assessment. Beyond this, we do not consider that fostering good relations would be negatively affected.

Monitoring

Adjudications are already monitored, audited, and evaluated in a variety of robust ways, including by IMB members, and through mandatory standardisation panels. These panels exist in every prison where adjudications are monitored, and data is considered to ensure that there are not any groups which are disproportionately adjudicated against or disproportionately punished.

We will further consider other impacts through the implementation of these Amendment Rules and continue to monitor outcomes and data regularly, including evaluation of any disproportionate impacts on particular groups. The Equalities Monitoring Tool is available on the HMPPS internal Performance Hub and includes data and analysis regarding adjudications in relation to protected characteristics. The Tool is designed to help staff and managers access and interpret data to identify areas of disparity.

We also commit to considering any identified impacts further as part of our whole system review of adjudications and through the process of updating the adjudications policy to become a Policy Framework.